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Chief Administrative Officer

Board of Supervisors  
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First District

YVONNE BRATHWAITE BURKE  
Second District

ZEV YAROSLAVSKY  
Third District

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Fourth District

MICHAEL D. ANTONOVICH  
Fifth District

February 10, 2004

To: Supervisor Don Knabe, Chairman  
Supervisor Gloria Molina  
Supervisor Yvonne Brathwaite Burke  
Supervisor Zev Yaroslavsky  
Supervisor Michael D. Antonovich

From: David E. Janssen   
Chief Administrative Officer

**SACRAMENTO UPDATE**

**New Assembly Speaker and New Committee Assignments**

Yesterday, Assembly Member Fabian Nuñez was sworn-in as the 66<sup>th</sup> Speaker of the Assembly, the fourth consecutive Speaker from the Los Angeles area. Assembly Member Yee (San Francisco) was named Speaker pro Tempore. Speaker Nuñez also announced changes to Assembly committee assignments as noted in Attachment I. Among the key changes are: Assembly Member Judy Chu becoming chair of the Appropriations Committee replacing Assembly Member Darrell Steinberg who becomes chair of the Budget Committee; Assembly Member Mervyn Dymally will assume the chair of Budget Subcommittee #1 – Health and Human Services replacing Assembly Member Chu; Assembly Member Rebecca Cohn replaces Assembly Member Dario Frommer as chair of the Health Committee; and Assembly Member Rudy Bermudez replaces Assembly Member Ed Chavez as chair of the Revenue and Taxation Committee. Speaker Nuñez indicated Assembly Members Chu, Steinberg, and John Dutra will also head an Assembly Fiscal Team to craft the Democratic strategy on the budget.

**Workers' Compensation Reform**

This week, the Senate Labor and Industrial Relations Committee begins a series of five hearings on workers' compensation reform, with the first hearing scheduled for Wednesday, February 11, 2004 on the issue of medical utilization. Next week, the

Committee will consider **County-supported SBX4 3 (Poochigian)** and other bills. It is unclear if the Legislature will be able to deliver a reform package to Governor Schwarzenegger before his stated deadline of March 1, 2004 whereby the Administration would pursue a reform initiative for the November 2004 ballot. Additionally, Insurance Commissioner John Garamendi is expected to announce a reform package this week which is aimed at bridging the gap between the Administration's plan and legislative Democrats.

### **Informational Hearing on Initiative Proposals to Reform Local Government Finance**

The Senate Local Government Committee has scheduled an informational hearing on Wednesday, February 11, 2004, from 9:30 a.m. to 12:00 noon, to discuss the Local Taxpayers and Public Safety Protection Act (CSAC and League of Cities initiative) and the California Home Rule Amendment (former Speaker Hertzberg's initiative). Attachment II contains materials prepared by committee staff.

### **Status of County-Interest Legislation**

**County-supported AB 26 (Pacheco and Leslie)**, which would require the Department of Justice to provide information on the Internet regarding registered sex offenders and appropriate an unspecified sum from the General Fund to create the website, failed to pass its house of origin by January 31, 2004 and is now dead.

**County-opposed AB 31 (Runner)**, which would have re-appropriated \$203 million in FY 2003-04 and distribute the funds to schools based on actual pupil attendance, failed to pass its house of origin by January 31, 2004 and is now dead.

**County-opposed AB 206 (Richman)**, which would have enacted the Emergency Health Powers Act and defined the powers of both State and local health authorities during a declared public health emergency, including conferring broad powers on the Governor during an emergency, failed to pass the Assembly by the January 31, 2004 deadline and is now dead.

**County-supported AB 261 (Maddox)**, which would have allowed the District Attorney the option to charge illegal pharmaceutical dealers with either a misdemeanor or a felony ("wobbler"), failed to pass the Assembly by the January 31, 2004 deadline and is now dead.

**County-opposed AB 435 (Matthews)**, which would make changes to the traffic violator school curriculum, authorize schools to offer the curriculum on the Internet, and shift responsibility for monitoring traffic schools from the Superior Court to the State

Each Supervisor  
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Department of Motor Vehicles, failed to pass the Assembly Transportation Committee on February 2, 2004.

**County-opposed AB 834 (LaSuer)**, which would change State law to require police agencies to destroy complaints and reports or findings relating to complaints against personnel after a five year retention, failed to pass its house of origin by January 31, 2004 and is now dead.

**County-supported AB 1618 (Firebaugh)**, which would require railroad companies in California to develop a protocol for rapid communication with the State Office of Emergency Services, the California Highway Patrol and designated local agencies in an endangered area during emergency situations where there is a runaway train, passed the Assembly Transportation Committee on February 3, 2004 by a vote of 17 to 0 with a recommendation that the Assembly concur with Senate technical amendments.

We will continue to keep you informed.

DEJ:GK  
MAL:JF:hg/n

c:     Executive Officer, Board of Supervisors  
        County Counsel  
        Local 660  
        All Department Heads  
        Legislative Strategist  
        Coalition of County Unions  
        California Contract Cities Association  
        Independent Cities Association  
        League of California Cities  
        City Managers Associations  
        Buddy Program Participants

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# Assembly California Legislature



**FABIAN NUNEZ**  
ASSEMBLY MEMBER, FORTY-SIXTH DISTRICT

February 9, 2004

E. Dotson Wilson  
Chief Clerk of the Assembly  
State Capitol, Room 3196  
Sacramento, CA 95814

Dear Dotson:

This is to advise you that I have made the following changes to Assembly Standing and Subcommittees, effective today, February 9, 2004:

## Aging and Long-Term Care

I have appointed Assemblymember Patty Berg to replace Assemblymember Lynn Daucher as the Chair of the committee. Assemblymember Daucher will remain as a member of the committee.

## Agriculture

Assemblymember Barbara Matthews will remain as Chair of the committee.

## Appropriations

I have appointed Assemblymember Judy Chu to replace Assemblymember Darrell Steinberg as Chair of the committee and removing Assemblymember Steinberg as a member.

## Arts, Entertainment, Sports, Tourism and Internet Media

I have appointed Assemblymember Ed Chavez to replace Assemblymember Rebecca Cohn as Chair of the committee; Assemblymember Cohn remains as a member of the committee.

## Banking and Finance

Assemblymember Patricia Wiggins will remain as Chair of the committee

  
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E. Dotson Wilson  
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### Budget

I have appointed Assemblymember Darrell Steinberg to replace Assemblymember Jenny Oropeza as Chair of the committee and removing Assemblymember Oropeza as a member. I have also removed Assemblymember Judy Chu from the Budget Committee, creating a Democratic vacancy on the Committee.

#### Budget Subcommittee #1 – Health and Human Services

I have appointed Assemblymembers Mervyn Dyrnally to replace Judy Chu as Chair of the subcommittee.

#### Budget Subcommittee #2 – Education Finance

Assemblymember Joe Simitian remains as Chair of the subcommittee.

#### Budget Subcommittee #3 – Resources

Assemblymember Fran Pavley remains as Chair of the subcommittee.

#### Budget Subcommittee #4 – State Administration

I have appointed Assemblymember John Dutra to replace Assemblymember Rudy Bermudez as Chair of the subcommittee.

#### Budget Subcommittee #5 – Information Technology/Transportation

Assemblymember Manny Diaz remains as Chair of the subcommittee.

### Business and Professions

Assemblymember Lou Correa remains as Chair of the committee.

### Education

Assemblymember Jackie Goldberg remains as Chair of the committee.

### Elections, Redistricting and Constitutional Amendments

Assemblymember John Longville remains as Chair of the committee.

### Environmental Safety and Toxic Materials

Assemblymember John Laird remains as Chair of the committee.

### Governmental Organization

Assemblymember Jerome Horton remains as chair of the committee.

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February 9, 2004  
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**Health**

I have appointed Assemblymember Rebecca Cohn to replace Assemblymember Dario Frommer as Chair of the committee; Assemblymember Frommer remains as a member.

**Higher Education**

Assemblymember Carol Liu remains as Chair of the Committee.

**Housing and Community Development**

Assemblymember Alan Lowenthal remains as Chair of the committee.

**Human Services**

Assemblymember Lois Wolk remains as Chair of the committee.

**Insurance**

Assemblymember Juan Vargas remains as Chair of the committee.

**Jobs, Economic Development and the Economy**

Assemblymember Mark Ridley-Thomas remains as Chair of the committee.

**Judiciary**

Assemblymember Ellen Corbett remains as Chair of the committee.

**Labor and Employment**

Assemblymember Paul Koretz remains as Chair of the committee.

**Local Government**

Assemblymember Simon Salinas remains as Chair of the committee.

**Natural Resources**

Assemblymember Hannah-Beth Jackson remains as Chair of the committee.

**Public Employees, Retirement and Social Security**

Assemblymember Gloria Negrete McLeod remains as Chair of the committee.

**Public Safety**

Assemblymember Mark Leno remains as Chair of the committee.

E. Dolson Wilson  
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**Revenue and Taxation**

I have appointed Assemblymember Rudy Bermudez to replace Assemblymember Ed Chavez as Chair of the committee; Assemblymember Chavez remains on the committee filling the Democratic vacancy.

**Transportation**

I have appointed Assemblymember Jenny Oropeza to replace Assemblymember John Dutra as Chair of the committee; removing Assemblymember Dutra from the committee.

**Utilities and Commerce**

Assemblymember Sarah Reyes remains as Chair of the committee.

**Veterans Affairs**

Assemblymember Nicole Parra remains as Chair of the committee.

**Water, Parks and Wildlife**

Assemblymember Joe Canciamilla remains as Chair of the committee.

Sincerely,



FABIAN NUÑEZ  
Speaker of the Assembly

**Reform by Initiative:  
Comparing Proposals to Reform Local Government Finance**

**Preliminary Agenda**

**Wednesday, February 11, 2004**

**9:30 a.m. to 12:00 noon**

**State Capitol, Room 112**

- |                       |   |
|-----------------------|---|
| <b>9:30 to 9:40</b>   | <b><u>Introductions</u></b><br>Senator Tom Torlakson, Chair   |
| <b>9:40 to 9:50</b>   | <b><u>Staff Briefing</u></b><br>Jennifer Swenson, Committee Consultant  |
| <b>9:50 to 10:30</b>  | <b><u>Presentation and Comparison</u></b><br><i>Local Taxpayers and Public Safety Protection Act</i><br>Hon. Paul Stein, President, California State Association of Counties;<br>Calaveras County Supervisor<br>Hon. John Russo, Past President, League of California Cities;<br>Oakland City Attorney<br>Hon. Bill Miller, President, California Special Districts Association;<br>General Manager, North of the River Municipal Water District<br><br><i>California Home Rule Amendment</i><br>Hon. Robert Hertzberg, Former Speaker, California State Assembly<br>Hon. John Campbell, Assembly Member, California State Assembly |
| <b>10:30 to 11:00</b> | <b><u>Member Question and Answer Period</u></b>   |
| <b>11:00 to 11:30</b> | <b><u>Association Comments and Reactions</u></b><br>Jean Ross, California Budget Project<br>Representative, California Taxpayers Association<br>Chris McKenzie, Executive Director, League of California Cities<br>Pat Leary, California State Association of Counties<br>Ralph Heim, California Special Districts Association  |
| <b>11:30 to 11:50</b> | <b><u>Public Comment</u></b><br>Individuals who wish to speak regarding the initiatives.  |
| <b>12:00 noon</b>     | <b><u>Hearing Adjourns</u></b>  |

**Reform by Initiative:  
Comparing Proposals to Reform Local  
Government Finance**

*A Staff Briefing Paper for the  
Informational Hearing*

Wednesday, February 11, 2004  
State Capitol, Room 112

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## **Reform by Initiative:** **Comparing Proposals to Reform Local Government Finance**

Years of working groups, select committees, and blue ribbon commissions have filled legislative shelves with reports, studies, and reform proposals for fixing the state-local relationship. For all the long thoughtful hours devoted to this topic, the Legislature has enacted very little real reform to improve this well documented problem. Frustrated by the Legislature's failure to act and its continual assault on local revenues (real or perceived), some interest groups are taking reform proposals straight to the voters. Concerned about the implications for the State budget, as well as having conflicting reform measures on the ballot, legislators want to know how the initiatives would work.

Senator Tom Torlakson, Chair of the Senate Local Government Committee, has called an informational hearing to learn more about two local government financing reform initiatives, the *Local Taxpayers and Public Safety Protection Act*, and the *California Home Rule Amendment*, proposed for the November 2004 statewide ballot. The Committee has invited the members of the Senate Budget Subcommittee No. 4 to attend as well. The Committee will hold its informational hearing on Wednesday morning, February 11, in the State Capitol.

The Committees' February hearing is an opportunity for state legislators to learn more about the two proposed initiatives and their implications for state budget decisions and the restructuring of local finance.

### **About This Paper**

This background paper prepares members of the two committees and those who are interested in the February 11 informational hearing. The Committee will hear from the sponsors of each initiative and engage in a question and answer session. There will be reaction to the two initiatives from some of the associations representing affected constituencies. The Committee will also reserve time for others to give their comments and reactions to legislators.

There are questions throughout the paper which legislators may want to ask the witnesses at the hearing. The suggested questions appear in *italics* and are preceded with the ➡ symbol.

## Background

Particularly since the property tax shifts in the early 1990s, local officials have been expressing their collective irritation with the State for restricting, raiding, and refusing to repay local revenue sources. Local officials argue (and many legislators agree) that the State's budgetary behavior toward local governments has led to increasing instability and unpredictability for local budgets. The convoluted state-local funding relationship that has evolved from the Educational Revenue Augmentation Fund (ERAF) shifts, General Fund "loans," offsets, and most recently, "flips" has removed revenue streams further and further from the services they pay for and rendered local government financing virtually impossible for the public (or anyone) to understand.

Many have discussed the deteriorating state-local fiscal relationship for years. There is little disagreement about the need for reform. Affected constituencies argue about the details, but not about the need for change. The Senate Local Government Committee's 2001 report "Tension & Ambiguity: A Legislative Guide to Recent Efforts to Reform California's State-Local Fiscal Relationship," summarizes the reform efforts. It is available on the Committee's website at [www.sen.ca.gov/locgov/publications.htm](http://www.sen.ca.gov/locgov/publications.htm)

The Legislature has picked away at change, but it has never fully attempted a statewide comprehensive reform package. The more comprehensive attempts were SB 1982 (Alpert, 2000) and its companion piece SCA 18 (Alpert, 2000), and AB 1221 (Steinberg, 2003). The Alpert package would have changed the allocation method of the local sales tax and streamlined the mandates claim process while the Steinberg bill would have swapped local sales tax for property tax. Both efforts met with strong resistance from both local officials and legislators and neither made it to the Governor's desk.

Local governments are increasingly concerned by the lack of a legislative solution, the continuing attempts to shift additional property taxes, the dysfunctional mandate reimbursement process, and the uncertain future of the vehicle license fee (VLF), including the promised backfill. As a result, the California State Association of Counties (CSAC), the League of California Cities, and the California Special Districts Association (CSDA) want to regain control of local revenue streams. Although they continue to work closely with legislators, CSAC, the League, and CSDA have filed a proposed November 2004 ballot initiative, the *Local Taxpayers and Public Safety Protection Act*.

Former Assembly Speaker Robert Hertzberg has been engaged in improving local governments' financial well being for many years. As Speaker, he expressed increasing concerns with a lack of stable and secure local government revenue sources and the ensuing deterioration of California's local quality of life. He has described sales tax chasing, the lack of accountability of both the state and local officials to the voters, and the resulting "blame game" as disturbing. Continuing his efforts to realign the state-local fiscal arrangement, Mr. Hertzberg, along with Curt Pringle, Mayor of Anaheim and former Assembly Speaker, and Assembly Member John Campbell, has filed the *California Home Rule Amendment* for the November 2004 ballot.

### Existing Law

The California Constitution and existing law and give the Legislature broad authority over the property tax, the local (Bradley-Burns) sales tax, and the vehicle license fee. While the Constitution sets the property tax rate and guarantees VLF revenues to cities and counties, the Legislature controls the allocation of property tax revenues and both the rate and revenue allocation method of the local sales tax and VLF. The sales tax is allocated on a situs basis and the bulk of VLF revenues goes to cities and counties on a per-capita basis. Counties receive additional VLF revenues to fund the 1991 realignment program. Starting in 1998, the Legislature has enacted a series of offsets to the 2% VLF rate, effectively reducing the rate paid by taxpayers. In turn, the state has backfilled cities and counties' lost revenues.

As part of the 2003-04 Budget, and to finance a \$10.7 billion deficit bond, the Legislature enacted a temporary ½ cent reduction in the local sales tax and offset the losses to local governments with increased property taxes (AB 1766, Committee on Budget, 2003 and AB 7X, Oropeza, 2003). The so-called "triple flip" terminates when the bond is fully repaid. If the \$15 billion bond measure proposed by the Governor for the March 2004 ballot (Proposition 57) passes, the terms of the triple flip will be modified. In addition, the 2003-04 Budget delays about \$1.3 billion of VLF backfill payments to cities and counties. The State is scheduled to repay this so-called "gap loan" in August 2006.

The California Constitution requires the state to reimburse local agencies for the costs of implementing a state mandated new program or higher level of service. It does not specify when or how often or the precise meaning of "new program or

higher level of service.” Existing law requires local agencies to continue to provide state mandated services even if the State delays payments. The 2003-04 Budget deferred over \$700 million in mandate reimbursements to local agencies. The Governor’s proposed 2004-05 Budget continues the deferral.

### **The Proposed Initiatives**

**Prelude.** Both sponsors have filed several versions of their proposals with the Attorney General. CSAC, the League, and CSDA have decided to pursue their Version 3 of the *Local Taxpayers and Public Safety Protection Act*. (File No. SA2003RF0067). Mr. Hertzberg’s group is still deciding among Version 2 (File No. SA2004RF0006), Version 3 (File No. SA2004RF0008), Version 4 (File No. SA2004RF0009), and Version 5 (File No. SA2004RF0010) of the *California Home Rule Amendment*. Version 2 is the “base version” of the proposal. Versions 3 and 4 each add a different paragraph or two to the base version. Version 5 encompasses them all. (For a detailed explanation of the variations between the versions see Appendix 1.) This paper focuses on Version 5 because it contains all of the potential provisions. Copies of the initiatives are available on the Attorney General’s website at [www.ag.ca.gov/initiatives/activeindex.htm](http://www.ag.ca.gov/initiatives/activeindex.htm). They are listed by file number.

**In Brief.** Both proposed initiatives seek to stabilize and provide predictability to local revenues. Both achieve this goal by reducing or removing the State’s control of local funding sources. The *Local Taxpayers and Public Safety Protection Act* amends the California Constitution to:

- Protect the property tax, local sales tax, and vehicle license fee (VLF), including the backfill, as local funds.
- Require the State to more quickly reimburse local governments for state mandated services, or otherwise allow them to suspend the unfunded services.

The *California Home Rule Amendment* encompasses most of the changes in the *Local Taxpayers and Public Safety Protection Act* (with some important differences) but goes further by swapping state and local funding sources. The *California Home Rule Amendment* makes both constitutional and statutory changes to:

- Protect the property tax, local sales tax, and several local taxes, as local funds.
- Trade the VLF to the State for more property tax.

- Make permanent the triple flip by trading ½ cent of the local sales tax to the State for more property tax.
- Require the State to more quickly reimburse local governments for state mandated services, or otherwise allow them to suspend the unfunded services.

**The Details.** Understanding the details of these two initiatives is a painstaking, but important process. Either of these two initiatives would preclude the State from taking some of its recent budgetary actions, including ERAF shifts, the triple flip, the gap loan, and the car tax cuts. Some of these actions may be affected retroactively. There is an additional \$1.3 billion proposed ERAF shift in the Governor's 2004-05 Budget, reliance on the triple flip mechanism to fund the Governor's proposed \$15 billion bond measure, and at least two pending lawsuits challenging the Governor's recent VLF actions. It is important for legislators to understand how the initiatives may affect these budgetary choices.

*The Local Taxpayers and Public Safety Protection Act* seeks to protect local revenue sources and improve the mandate reimbursement process. It makes two substantial changes to the California Constitution.

Local revenue protection. The initiative adds Article XIII E, protecting local revenues. For this article it defines a "local government" as a city, county, a city and county, special district, redevelopment agency, but explicitly states that it does not include a school district, community college district, or county office of education.

Specifically, the initiative says that any measure enacted by the Legislature that reduces, suspends, or delays revenues to local governments from the

- property tax,
- local sales tax,
- VLF, including the backfill amount,
- VLF backfill "gap" loan,

or fails to reinstate the suspended ½ cent local sales tax in the triple flip on time, must be approved by the Legislature by the same vote required to approve a budget bill (2/3 vote under existing law) and does not take effect until it is also approved by a majority of voters at the next statewide election.

These provisions cover the allocation of property tax revenues, including redevelopment property tax increment, any remittance of property tax to the State or a state-created fund (e.g. ERAF), the property tax associated with the triple flip,

and changing the allocation method of the local sales tax. They also apply to reallocating property taxes among local governments unless they consent. These provisions do not apply to a VLF (including the backfill amount) reduction if the Legislature appropriates funds to fully offset the reduction.

Because the initiative does not apply to school districts, it does not preclude the Legislature from shifting property tax shares from schools to other local governments or from returning ERAF.

These revenue protection provisions are retroactive to November 1, 2003. Any measure enacted into law after November 1, 2003 that would have required voter approval under this initiative must be submitted to the voters at the next statewide election. Any such measure would be suspended as of the initiative's effective date, pending the outcome of the election. If the measure subsequently fails at the statewide election, the law never takes effect. If it passes, the law takes effect as of the successful election and is not retroactive to its original effective date unless the Legislature reimburses the affected local governments for their losses during the suspension period.

- ➡ *Does this initiative achieve local government finance reform or simply freeze an existing flawed revenue structure?*
- ➡ *By locking in the existing AB 8 allocations and local sales tax distribution methodology, does this initiative preclude the Legislature from enacting a comprehensive state-local finance reform package?*
- ➡ *If no, does it make it harder?*
- ➡ *The initiative calls for voter approval at the "next statewide election." Depending on the timing, that could be as much as a two-year delay. How does that affect the State budget process?*
- ➡ *Does this initiative increase the legislative vote threshold for a local sales tax or VLF tax break from a majority vote to a 2/3 vote?*
- ➡ *How does this initiative affect the State's ability to conform to the Streamlined Sales and Use Tax Agreement (SSUTA)?*
- ➡ *What measures have been enacted into law since November 1, 2003 that will be retroactively affected by this initiative?*

- ➡ *For any such measure, would this initiative suspend the entire law or just the portions that require voter approval?*
- ➡ *The triple flip modifications associated with the Governor's bond proposal on the March 2004, ballot were enacted into law on December 12, 2003 (AB 9 (5X)). The bill contains the sales tax reduction associated with the triple flip as well as the bond sale provisions. The actual language regarding the sales tax reduction is not on the ballot although it is only operative if the voters approve the bond measure. Is AB 9 (5X) subject to the retroactive provisions of this initiative?*
- ➡ *If yes, would the operation of the entire bill be suspended until the next statewide election?*
- ➡ *What if the bonds have already been sold?*
- ➡ *Who decides?*

State mandated local programs. The second piece of the *Local Taxpayers and Public Safety Protection Act* affects reimbursements to local governments for state mandated services. The initiative does not narrow the definition of a "local government" for its mandate provisions and thus applies to all local governments, including schools.

Specifically, the initiative:

- Defines a "new program" or "higher level of service" as
  - creation of a new program,
  - requirement to provide new services,
  - increasing the frequency or duration of required services,
  - increasing the number of persons eligible for services,
  - transferring complete or partial financial responsibility for a program from the state to local government.
- Requires the state to annually provide reimbursements to local governments for mandated services.

- Requires the payment to occur within 180 days of either the effective date of a statute or regulation containing a mandate or a final determination that reimbursement is required.
- Provides that if the Legislature does not fully reimburse a local government in the fiscal year in which it files a reimbursement claim, or in the budget act in the next fiscal year, a local government may either:
  - Continue performing the mandate and get paid later, or
  - Suspend performing the mandate for all or part of the unpaid fiscal year and continue doing so in future years until the state provides full reimbursement.

This provision explicitly prohibits a local government from opting to suspend a mandate that requires a local government to provide or modify any protection, right, benefit or employment status for any local government employee or retiree as well as any procedural or substantive right for any employee or employee organization.

- Defines a mandate to be any statute, action, or order determined by the Legislature, any court, or the Commission on State Mandates, to require reimbursement under this section.
- ➡ *The existing definitions of “new program” and “higher level of service” are derived primarily from case law. How does this initiative change the current understanding?*
  - ➡ *Does “increasing the number of persons eligible for services” mean caseload growth?*
  - ➡ *Does including “transferring complete or partial financial responsibility...” in the definition of a state mandate preclude the state from enacting another “realignment” measure?*
  - ➡ *Even if the local governments agree to it?*
  - ➡ *The initiative requires the Legislature to reimburse a local government within six months of a final determination that the mandate is reimbursable. It also says that if a local government is not reimbursed during the same (or next) fiscal year in which they filed a claim for reimbursement the local*

*government may suspend performing the mandate. Is it possible or even likely that the final determination process could extend beyond the next fiscal year after the claim is filed?*

- ➡ *If yes, can the local government suspend the mandate?*
- ➡ *Only likely with first time claims?*
- ➡ *What does the suspension option exemption for employee/retiree protection cover? Collective bargaining rights? Police Officers' Bill of Rights?*
- ➡ *There is sometimes disagreement within the Legislature as to whether a particular statute creates a reimbursable mandate. A Legislative Counsel mandate key "yes" doesn't necessarily mean it is reimbursable. And the courts can review it. How does the Legislature decide?*
- ➡ *Would their decision still be reviewable by a court or the Commission under this initiative?*

***The California Home Rule Amendment*** seeks to protect and stabilize local revenue sources and improve the mandate reimbursement process. It makes both constitutional and statutory changes.

Local revenue protection. The initiative spells out provisions for protecting local revenues by amending Article XIII, §24 of the California Constitution. It protects revenues for cities, counties, and a city and county, but not special districts or redevelopment agencies.

Specifically, the initiative says the Legislature may not reduce, suspend, or delay the receipt of revenues to cities or counties from the

- property tax, or
- local sales tax,

and may not appropriate, reallocate, redistribute, reapportion, reduce, suspend or delay revenues from locally imposed taxes including the

- business license tax,
- transient occupancy tax (hotel tax), and
- utility users tax.

These provisions cover property tax allocations, any remittance of property tax to the State or a state-created fund (ERAF), and changing the allocation method of the local sales tax. They also apply to reallocating property taxes among local governments unless they consent.

Further, the initiative prohibits the State from establishing tax exemptions from the property tax or local (Bradley-Burns) sales tax unless it provides a continuous appropriation to reimburse local governments for their lost revenues. (*Note: this prohibition is in Version 3. It does not appear in Versions 2 or 4.*)

Because these provisions do not apply to special districts, redevelopment agencies, or school districts, they do not preclude the Legislature from reallocating property tax revenues from special districts, redevelopment agencies, and schools to other local governments.

These provisions are not retroactive.

- ➡ *Special districts provide many of the same important local services that cities and counties provide. Why does this initiative protect cities and counties but not special districts?*
- ➡ *Why doesn't it protect redevelopment agencies?*
- ➡ *Does this initiative stop the Legislature from enacting tax decreases?*
- ➡ *Does this prohibit the Legislature from repealing the statutory authority for local taxes such as the utility users tax?*
  - ➡ *Can the Legislature cap the local tax rates?*
- ➡ *How does this initiative affect the State's ability to conform to the Streamlined Sales and Use Tax Agreement (SSUTA)?*
- ➡ *Why does this initiative prohibit the Legislature from enacting a property or sales tax exemption without reimbursing local governments for their losses?*
  - ➡ *If the State wants to enact a particular tax exemption, why shouldn't local governments participate in a statewide economic policy decision?*

State mandated local programs. The *California Home Rule Amendment* affects reimbursements to local governments for state mandated services. The initiative does not narrow the definition of a “local government” for its mandate provisions and thus applies to all local governments, including schools.

Specifically, the initiative:

- Explicitly defines a “new program” or “higher level of service” as
  - creation of a new program,
  - requirement to provide new services,
  - increasing the frequency or duration of required services,
  - increasing the number of persons eligible for services,
  - transferring complete or partial financial responsibility for a program from the state to local government.
- Requires the state to provide an annual reimbursement to local governments for mandated services.
- Requires the payment to occur at the end of the fiscal year of either the effective date of a statute or regulation containing a mandate or a final determination that reimbursement is required.
- For mandates created on or after January 1, 2005, provides that if the Legislature does not fully reimburse a local government in the fiscal year in which it files a reimbursement claim, or in the budget act in the next fiscal year, a local government may either:
  - continue performing the mandate and get paid later, or
  - suspend performing the mandate for all or part of the unpaid fiscal year and may continue to do so in future years until the state provides full reimbursement.

This provision explicitly prohibits a local government from opting to suspend a mandate that requires a local government to provide or modify any protection, right, benefit or employment status for any local government employee or retiree as well as any procedural or substantive right for any employee or employee organization.

- Defines a mandate to be any statute, action, or order determined by the Legislature, any court, or the Commission on State Mandates, to require reimbursement under this section.

- Prohibits the 1991 realignment program from being or becoming a reimbursable mandate.
- *The existing definitions of “new program” and “higher level of service” are derived primarily from case law. How does this initiative change the current understanding?*
- *Does “increasing the number of persons eligible for services” mean caseload growth?*
- *Does including “transferring complete or partial financial responsibility...” in the definition of a state mandate preclude the state from enacting another “realignment” measure?*
- *Even if the local governments agree to it?*
- *The initiative requires the Legislature to reimburse a local government at the end of the fiscal year in which a final determination is made that the mandate is reimbursable. It also says that if a local government is not reimbursed during the same (or next) fiscal year in which they filed a claim for reimbursement the local government may suspend performing the mandate. Is it possible or even likely that the final determination process could extend beyond the next fiscal year after the claim is filed?*
- *If yes, can the local government suspend the mandate?*
- *Only likely with first time claims?*
- *There is sometimes disagreement within the Legislature as to whether a particular statute creates a reimbursable mandate. A Legislative Counsel mandate key “yes” doesn’t necessarily mean it is reimbursable. And the courts can review it. How does the Legislature decide?*
- *Would their decision still be reviewable by a court or the Commission under this initiative?*
- *Why does this initiative prohibit realignment from becoming a reimbursable mandate?*

Two tax swaps. The *California Home Rule Amendment* requires two tax swaps. It also sets up a new fund in order to direct the swapped revenues to schools. It amends or adds several sections to the California Constitution and makes conforming statutory changes. These swaps are the most technically difficult part of this initiative proposal.

*Swap #1: VLF for property tax.* Under the first swap, cities and counties would trade their VLF revenues (including the backfill) for increased shares of K-14 property tax beginning July 1, 2005. Realignment VLF would be unaffected.

The initiative achieves this by:

- Repealing the Constitutional guarantee of VLF revenues to cities and counties (Article XI, §15) allowing these funds to flow to the State.
- Directing the State Controller to allocate all non-realignment VLF and backfill revenues (not including fees on trailer coaches and mobile homes) into the newly created School Assistance Fund for Education (SAFE) in each county on a county-wide per capita basis. These funds are dedicated to K-14 education.
- Reducing property taxes paid by cities and counties to the ERAF fund. If a county's ERAF fund is inadequate to finance the swap, additional property taxes are taken from the school's base share. The amount of the swap would be based on 2004-05 VLF funds received calculated at the 2% rate.

Further, the initiative provides that

- "basic aid" school districts affected by the swap are held harmless in the first year but support is phased out over the next ten years, and
- local revenue sharing agreements are unaffected by the swap.

*Swap #2: Local sales tax (1/2 cent) for property tax.* Under the second swap, cities and counties permanently lose their authority to levy the 1/2 cent sales tax that was temporarily suspended under the triple flip. They receive increased property taxes in exchange.

Specifically the initiative:

- Repeals city and county authority to levy the 1/2 cent local sales tax.
- Authorizes a new 1/2 cent sales tax for each county office of education after the triple flip terminates.

- Provides cities and counties with property taxes based on estimated 2004-05 sales tax revenues. In subsequent years, this increased amount is added to cities and counties property tax base.
- Repeals the existing triple flip mechanism and replaces it with a new one to accommodate these changes.

*A new school fund.* As part of its overall restructuring proposal, the initiative adds Article XIII, §36 to the Constitution to create a School Assistance Fund for Education (SAFE) in each county. All non-realignment VLF revenues and the post triple flip ½ cent sales tax revenues in each county would be deposited into this fund for distribution to K-14 schools. The initiative sets up a distribution scheme for these payments to K-14 agencies on a per-student basis within each county.

*City and county cash flow.* To address the cash flow transition between the monthly distribution of VLF revenues and the semi-annual receipt of property tax revenues, the SAFE fund loans monthly payments to each city and county in advance of their property tax receipts. The loans are repaid when property taxes are collected.

*Swaps are constitutionally protected.* The initiative guarantees that both swaps will occur and that the revenues will be used for their intended purposes by adding Article XI, Section 15 to the Constitution. It also provides that these provisions do not restrict the Legislature from increasing property tax allocations to cities and counties.

*SAFE deposits are not state taxes for Proposition 98 purposes.* The initiative amends Article XVI, §8 of the California Constitution to declare that all sales tax and VLF revenues deposited in the SAFE account are “allocated local proceeds of taxes” and are not considered to be State General Fund revenues. This avoids affecting the State’s obligation to fund education.

➡ *By locking down local revenue sources, does this initiative lock in the best solution or simply remove funding flexibility from the Legislature?*

➡ *Does it preclude the Legislature from enacting a better solution?*

- ➡ *Funds in the SAFE account are used both as loans to cities and counties and as funding for schools. How do funds flow to schools and to cities and counties as loans at the same time?*
- ➡ *Does this proposal use county ERAF funds to increase cities' property tax shares?*
- ➡ *Are there enough ERAF dollars in each county to support the swaps?*
  - ➡ *Is there data to show the impacts?*
- ➡ *What is the mechanism for allocating property taxes back to cities and counties?*
- ➡ *What is the interaction between ERAF and SAFE?*
  - ➡ *Why is ERAF not eliminated?*
- ➡ *Why is support for basic aid school districts phased out?*
  - ➡ *Who will this affect?*
- ➡ *Is there a simpler way to do this?*

Other provisions. *If the Governor's Bond passes.* If the Governor's \$15 billion bond measure passes, AB 9 (5X) becomes operative and makes several changes to the triple flip. Section 21 of the *California Home Rule Amendment* reconfigures all of the initiative's relevant provisions to conform with the changes made by AB 9 (5X) to ensure that the effect of the initiative is substantially unchanged. Section 21 only becomes operative if the bond measure passes.

Conflicting measures. Article II, §10(b) states "If provisions of 2 or more measures approved at the same election conflict, those of the measure receiving the highest affirmative vote shall prevail." The California Supreme Court concluded in Taxpayers to Limit Campaign Spending v. FPPC (1990) 51 Cal.3d 744, "that initiative ballot measures addressing the same subject are to be examined as a whole and, if they offer conflicting regulatory schemes for governance of that subject, it is the "measure" receiving the highest affirmative vote which prevails. Absent an express contrary intent expressed in one or both of the initiative measures, no part of the measure receiving the lesser affirmative vote becomes

operative.” The *California Home Rule Amendment* expressly states the voters’ intent that if this initiative passes and receives more affirmative votes than a competing measure that also passes, the provisions in *California Home Rule Amendment* shall prevail over conflicting provisions or requirements of the competing measure.

➡ *If the Governor’s \$15 billion bond passes, are the effects of this initiative exactly the same?*

➡ *If not, how do they differ?*

➡ *Is the “conflict with competing measures” provision (Section 26 of the initiative) different from the courts’ interpretation of Article II, §10(b) of the California Constitution?*

➡ *If yes, how?*

➡ *What other initiatives proposed for the November 2004 ballot potentially conflict with this measure?*

### **Key Similarities and Differences.**

Although the *California Home Rule Amendment* (Hertzberg) appears to encompass the *Local Taxpayers and Public Safety Protection Act* (CSAC), there are important differences.

Local revenue protection. The *Local Taxpayers and Public Safety Protection Act* protects property tax, sales tax, and VLF revenues for counties, cities, special districts, and redevelopment agencies retroactive to November 1, 2003. The *California Home Rule Amendment* initiative only protects cities and counties. While the CSAC initiative effectively prohibits the state from making further ERAF shifts, the Hertzberg proposal leaves open the possibility of taking additional property taxes from special districts and redevelopment agencies.

CSAC allows reductions in or reallocations of local revenues with a 2/3 vote of the Legislature and a majority vote of the statewide electorate. Under the Hertzberg proposal, which has no comparable option, the Legislature simply can’t do it.

The Hertzberg initiative protects locally levied taxes as well: business license, transient occupancy, and utility users taxes. These protections preclude the state from tapping locally levied taxes for its own purposes or, arguably, from capping

the rates. The CSAC initiative does not provide these same protections for locally levied taxes.

State mandates. Both initiatives amend Article XIII B §6 of the California Constitution regarding state imposed local mandates. Their language largely overlaps. They both require an annual appropriation. The Hertzberg initiative requires reimbursement at the end of the fiscal year in which a mandate becomes effective or is adjudicated to require a reimbursement. The CSAC initiative requires it within six months. The Hertzberg initiative only applies to mandates created on or after January 1, 2005. The CSAC initiative applies to existing mandates.

Both initiatives add an identical definition of a “new program” or “higher level of service.” Both initiatives allow local governments to suspend performing a mandate if the State doesn’t pay in a timely fashion. However, the Hertzberg initiative only allows suspension for mandates created on or after January 1, 2005. Both initiatives prohibit local governments from suspending mandates regarding employee or retiree rights and protections.

The Hertzberg proposal explicitly prohibits the 1991 realignment program from being or becoming a reimbursable mandate.

Tax swaps. The Hertzberg initiative swaps city and county VLF revenues and ½ cent of the local sales tax for an increased share of the schools property tax. It constitutionally protects the changes and rearranges school funding accordingly. The CSAC proposal does not include revenue swaps, but constitutionally protects the existing structure.

## Sources and Credits

The following individuals and organizations were helpful in preparing this document:

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## Appendix 1

This Appendix explains the differences between the five versions of the California Home Rule Amendment currently on file with the Attorney General's office.

**Version 1** (SA2003RF0068) **has been pulled.**

**Version 2** (SA2004RF0006) is the "base version" of CHRA. It contains substantial revisions from Version 1 reflecting some policy changes and numerous technical fixes.

**Version 3** (SA2004RF0008) is Version 2 with the addition of one paragraph relating to state-created classifications or exemptions from property or sales taxes.

### **1. Addition Regarding State Exemptions from Property and Sales Taxes**

#### **Section 5 of CHRA**

Amendment to Section 24 of Article XIII of the Constitution:

Section 24 (c) The Legislature may not take any action that:

*(5) Establishes any classification or exemption from the ad valorem taxes on real property and tangible personal property that are collected by counties pursuant to Section 1 of Article XIII A or a sales and use tax imposed by any city, city and county, or county pursuant to the terms of the Bradley-Burns Uniform Sales and Use Tax (Chapter 1 of Part 1.5 of Division 2 of the Revenue and Taxation Code), which classification or exemption does not include a continuous appropriation of funds that shall be transferred to city, city and county, and county governments in an amount equal to the net loss of revenue resulting from the classification or exemption. Nothing in this subdivision (c) shall prohibit the Legislature from establishing any classification or exemption for which the Legislature does include a continuous appropriation of funds as specified in this paragraph.*

**Version 4** (SA2004RF0009) is Version 2 with the addition of some language relating to excess ERAF/excess SAFE counties, a clarification regarding redevelopment, and a technical amendment.

### **1. Technical Amendment**

#### **Section 4 of CHRA**

Addition of Section 16 to Article XI of the Constitution

Section 16. (c) For the 2006-07 ~~and 2007-08~~ fiscal years, each city, city and county, and county shall receive property tax revenues in the amounts not less than those specified in other applicable provisions of the California Home Rule Amendment and other laws implementing the Provisions of the California Home Rule Amendment.

### **2. Amendments regarding Excess SAFE/ERAF Counties**

#### **Section 6 of CHRA**

Addition of Section 36 to Article XIII of Constitution.

## Appendix 1 continued

Section 36. (a) (1) A county School Assistance Fund for Education is hereby created in each county.

(2) The county auditor shall allocate moneys in the fund according to this section.

(3) Moneys in the fund may only be allocated and appropriated for the purposes specified in this section.

(4) *The county auditor shall calculate and allocate moneys for the county's School Assistance Fund for Education and the Educational Revenue Augmentation Fund, and shall determine the order in which these calculations and allocations are made. Any excess moneys remaining after these calculations and allocations will be returned to each city, city and county, county, and special district in proportion to their contribution to the said funds. The intent of requiring each county auditor to determine the order in which these calculations and allocations are made is to ensure that all cities, city and counties, counties, and special districts that were previously receiving funds pursuant to Section 97.2, subdivision (d)(4)(B)(i) and Section 97.3, subdivision (d)(4)(B)(i) are not adversely impacted by the establishment of the county's School Assistance Fund for Education. This paragraph shall also apply to any city, city and county, county, or special district that, after the effective date of this section, becomes eligible to receive funds pursuant to Section 97.2, subdivision (d)(4)(B)(i) and Section 97.3, subdivision (d)(4)(B)(i).*

[No changes to (b) and (c)]

(d) (1) (A) On August 20 of the 2005-06 fiscal year, and on the 20th day of each sixth month thereafter, the county auditor shall allocate all moneys from the county's School Assistance Fund for Education to school districts and county offices of education on a per-student basis as set forth in this section. *Any funds remaining after allocation of a per-student basis as set forth in this subdivision shall be allocated among the cities, city and counties, counties, and special districts in proportion to their contribution to the county's School Assistance Fund for Education.*

### **3. Amendments Regarding Redevelopment Agencies**

#### **Section 12 of CHRA**

Addition of Section 97.68 to the Revenue and Taxation Code

97.68 (e) Nothing in this section shall do any of the following:

(1) *Require an increased ad valorem property tax revenue allocation to a community redevelopment agency. Nor shall anything in this section result in a community redevelopment agency being allocated, for project areas existing as of the effective date of this section, an amount of tax increment revenue in excess of the amount that otherwise would have been allocated absent the enactment of this section.*

## Appendix 1 continued

### 4. Conforming Amendments

#### Section 21 of CHRA

Amendments to Section 21 mirroring amendments 1 and 2 above

**Version 5** (SA2004RF0010) is Version 2 with the combined changes of Versions 3 and 4.

Source: Edward Takashima, Director of Special Projects, LA Tomorrow.